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October 6, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Implementation of the Federal Communications Commission's
Triennial Review Order (Nine-month Proceeding)*
Docket No. 03-00491

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's Comments in response to the Notice of Status Conference and Filing dated October 1, 2003. Like CompSouth, BellSouth has proposed to address the issue of market definition in the context of the parties' direct testimony and after the completion of discovery. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Implementation of the Federal Communications Commission's
Triennial Review Order (Nine-month Proceeding)*

Docket No. 03-00491

COMMENTS OF BELL SOUTH TELECOMMUNICATIONS INC.

BellSouth Telecommunications, Inc. ("BellSouth") files these Comments in response to the October 1, 2003 Notice issued by the Hearing Officer in the above-styled docket.

As the Notice correctly stated, the parties have previously urged that discovery is needed prior to the presentation of evidence or argument pertaining to the issue of market definition in the case. Accordingly, the parties have proposed to address the issue of market definition in the context of their direct testimony after the completion of discovery.

The parties have been asked to comment on whether this proposed, jointly-acceptable process adequately addresses any indication in the TRO that the market definition question be determined prior to making a decision on impairment. The parties agree and believe that the Authority should not attempt to define the appropriate market until discovery is completed and evidence presented. The parties further believe and agree that the process proposed is completely consistent with the requirements of the TRO and would provide the most

appropriate record upon which the Authority can base its ultimate decisions in this proceeding.

Importantly, the TRO simply does not mandate, require, or otherwise direct that the question of market definition be determined separately from the same proceeding in which the Authority addresses the issue of impairment. In fact, the TRO clearly directs that in determining the appropriate definition of the relevant geographic market, that the Authority consider facts that will only be collected in connection with the development of the record to be used in determining the impairment issue. In the TRO, the FCC stated:

We require state commissions to define each geographic market on a granular level and direct them to take into consideration the locations of customers actually being served by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies.

TRO at Footnote 1536. Obviously in determining the relevant geographic markets in Tennessee, the Authority has been instructed to consider things that will only be available after the record in this proceeding has been developed through discovery and testimony. Clearly, that cannot occur until discovery has been conducted and testimony submitted.

Indeed, it appears that the only place that a two-step analysis is contemplated by the TRO is set forth in Paragraph 494 of the TRO. However, while the TRO does describe the impairment analysis in a particular market as a two-step process, the parties agree that this description means only that the Authority must consider the evidence of impairment (as opposed to the definition

of the geographic market itself) in a sequential manner. First, the Authority must determine whether the triggers are met in a particular market, and failing that, the Authority must consider the issue of whether there is no impairment because, even in the absence of meeting the triggers, the other factors identified by the FCC have been met.

This bifurcation of the decision-making process regarding the impairment analysis does not mandate any particular procedural process, but instead merely describes the logical decision-making process in which the state commissions are to engage. The TRO itself imposes no requirement that the process of gathering and presenting evidence be bifurcated into two steps, and, indeed, an attempt to separate the discovery and presentation of evidence in this fashion is likely to present substantial problems.

To the extent that the TRO indicates that, depending on the first of the two impairment analysis steps, the state commissions may not need to proceed to the second step, this does not mean that the TRA could save time and resources by focusing singularly on market definition, just in case no second step is required. In applying the triggers test, or in evaluating impairment on the alternative test, a market definition must be used. However, the data needed to define the market has to be determined after the collection of the relevant facts, not before those facts are ascertained. For purposes of discovery and presentation of testimony, the matters relevant to the entire impairment analysis cannot be succinctly segregated from the evidence and matters relevant solely to market definition at this stage of the case. Rather than saving the time and resources of the TRA,

attempting such a bifurcation will more likely create confusion and limit the ability of the parties to present a cogent, organized case and limit the Authority's ability to consider these issues in a holistic, comprehensive manner.

For the foregoing reasons, BellSouth respectfully urges the TRA to proceed in the manner set forth in the parties' joint proposals.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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